

CASE OF GEORGE FISHER.

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LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

*Copies of decisions of the Secretary of War relating to the claim of George Fisher, deceased.*

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JANUARY 2, 1861 — Referred to the Committee on Indian Affairs, and ordered to be printed.

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TREASURY DEPARTMENT, December 29, 1860.

SIR: In answer to the resolution of the House of Representatives of the 18th instant, "That the Secretary of the Treasury be requested to furnish to this House copies of decisions made and certified to the Treasury Department by the Secretary of War, under dates of October 2, 1857, and November 23, 1860, respectively, relating to the claim of George Fisher, late of Florida, deceased," I have the honor to transmit herewith copies of decisions of the Secretary of War, dated, respectively, October 2, 1858, and November 23, 1860, taken from the originals on file in the office of the Third Auditor of the Treasury, to whom the resolution was referred, who states that the same are the only decisions on the claim in question on file in his office.

I have the honor to be, very respectfully,

PHILIP F. THOMAS,  
*Secretary of the Treasury.*

Hon. WILLIAM PENNINGTON,  
*Speaker of the House of Representatives.*

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WAR DEPARTMENT, October 2, 1858.

In conformity with the provisions of the joint resolution approved June 3, 1858, I have considered the claim of the legal representatives of George Fisher, deceased, and find from a full examination of the evidence adduced that the claimants are entitled, under the acts of April 12, 1848, and December 22, 1854, for their relief, to receive, as the full value of the property destroyed by the troops, the sum of \$18,104, as follows:

Corn at Bassett's creek.....	\$3,000
Cattle.....	5,000
Stock hogs.....	1,050
Drove hogs.....	1,204
Wheat.....	350
Hides.....	4,000
Corn on the Alabama river.....	3,500
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	18,104
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The evidence as to the destruction by Indians is not wholly free from obscurity; but as the Indians were proved to have destroyed everything they could before the troops entered in pursuit, so strong a presumption is afforded that the houses with all their contents were burned, and all the liquor drank or consumed with the houses, by them, as to satisfy me, in the absence of proof to the contrary, that the claimants are not legally entitled to receive payment for the value of this portion of the property.

I am clearly of opinion that the acts referred to authorize and direct the allowance of interest on the amount found to be due, and it will be allowed accordingly, to be computed at the rate of six per cent. from the time the destruction took place: \$14,604 from September 1, 1813, and on \$3,500 from July 1, 1814.

From the amount thus awarded will be deducted all sums heretofore paid on account of this claim, with interest at six per cent. from the date of each payment.

The Third Auditor will settle the claim on the basis of this award.

JOHN B. FLOYD,  
*Secretary of War.*

WAR DEPARTMENT, *November 23, 1860.*

In compliance with the joint resolution of June 1, 1860, entitled "A resolution relating to the claim of George Fisher, late of Florida, deceased," I have revised my execution of the act of Congress of December 22, 1854, entitled "An act supplemental to an act therein mentioned." I deem it proper to preface the present award with a brief reference to the previous action of Congress, and of the executive department in reference to the claim of George Fisher's representatives.

The first act passed in relation to this subject was that of April 12, 1848, (9 Stat., 712.) Under that act the Second Auditor, on the 22d April, 1848, made an award in favor of the claimants for \$8,873 00, being the one-half of the value of the property destroyed, according to his estimate. He made no allowance of interest, and he assumed, against the weight of the evidence, that one-half of the property had been destroyed by the Indians. In December, 1848, the Auditor reconsidered the case; he corrected an error of \$100 in his former calculation, and allowed interest on the one-half of the value of the property from the date of the first application to Congress until the date of the award, *i. e.*, from 1832 till 1848. By this second award the additional sum of \$8,997 94 was allowed and paid.

In 1849, in consequence of an opinion of Mr. Toucey, then Attorney General, the Auditor again reconsidered the case, and allowed the further sum of \$10,004 89, being the interest on the amount first allowed by him from the date of the destruction of the property until 1832.

All this was done under the original act of April 12, 1848. The allowances covered the one-half of the value of the property destroyed as estimated by the Auditor, with interest from the date of its destruction until the date of the award.

On the 22d of December, 1854, Congress passed another act, (see 10 Stat., 835,) requiring the Second Auditor to re-examine the case; but in consequence of an order from the Secretary of the Treasury, no further allowances were made, and all executive action was suspended until after the passage of the joint resolution of June 3, 1858, (see 11 Stat., p. 553,) which transferred to the Secretary of War the duties required of the Second Auditor by the act of December 22, 1854.

In pursuance of this joint resolution of June, 1858, I proceeded to examine the case, and estimated the value of the property belonging to Col. Fisher and destroyed in 1813 and 1814, at a sum only one hundred and fifty-eight dollars greater than the valuation which had been placed upon it by the Auditor. But the evidence showing that all or very nearly all the property had been destroyed by the United States troops, the whole of this sum was allowed as the principal of the claim, and interest was added from the year 1813 until the date of the award. From the amount thus allowed the previous payments were deducted, and the remainder, \$39,217 50, being about one-fourth of the sum then claimed by the representatives of George Fisher, deceased, was paid to them in two separate instalments in October and November, 1858.

After this had been done, and with a full knowledge of the fact and of the previous history of the claim, Congress passed the joint resolution of June 1, 1860. It is very plain, from the language of the resolution and from the reports of committees previously, that it was considered necessary to require a revision of the account in detail, and that Congress regarded the estimate of the value of the property made by the Auditor (and which was substantially the same as my own) as being much less than the evidence required. It seems to be assumed by the resolution that full effect had not been given to all the testimony on file in the case. I find, on a careful examination of the depositions, substantial grounds for such an assumption. For the most part the items in the account were fairly and fully stated, but the testimony in relation to a few others, and particularly in regard to the corn crops, demands a much higher allowance than any heretofore made by the Auditor or myself. The highest calculation of the worth of these crops, based on affidavits, as to quantity, quality and price, would make their value exceed thirty thousand dollars. I have concluded to allow a little more than one-half of that sum as the mean of the different estimates.

The allowance of interest on the value of the property destroyed, beside receiving the sanction of the executive departments heretofore, has also the approval of Congress. After the lapse of so many years, this constitutes the chief element in the account; but to decide against

it now, is simply to say that the claimants have been overpaid, and are debtors to the United States, on their own statement, to the amount of \$15,191 33. I cannot bring myself to the conclusion that Congress would have required the revision of the account with a view to further allowances, if the revision were to be made on principles which would lead to the inevitable inference that too much had been allowed already.

With these views, and with an earnest desire to execute truly the legislative will, I have revised my execution of the act of Congress of December 22, 1854, as required by the joint resolution of June 1, 1860. I have considered and given effect to all the testimony filed in the case, including the depositions formerly rejected by the Second Auditor, and have restated the account heretofore stated by me under the said resolution, making such corrections on the former statement and settlement and such further allowances on account of said claim beyond what has heretofore been allowed and paid as, in my opinion, justice to the claimants requires, and which is evidently in conformity to the will of Congress.

The following is the statement of the account as thus revised and corrected :

*The United States in account with the legal representatives of George Fisher, deceased.*

1813.—To 550 head of cattle, at \$10	-	-	-	\$5,500 00
To 86 head of drove hogs	-	-	-	1,204 00
To 350 head of stock hogs	-	-	-	1,750 00
To 100 acres of corn on Bassett's creek	-	-	-	6,000 00
To 8 barrels of whiskey	-	-	-	350 00
To 2 barrels of brandy	-	-	-	280 00
To 1 barrel of rum	-	-	-	70 00
To dry goods and merchandise in store	-	-	-	1,100 00
To 35 acres of wheat	-	-	-	350 00
To 2,000 hides	-	-	-	4,000 00
To furs and hats in store	-	-	-	600 00
To crockery ware in store	-	-	-	100 00
To smiths' and carpenters' tools	-	-	-	250 00
To houses burned and destroyed	-	-	-	600 00
To 4 dozen bottles of wine	-	-	-	48 00
1814.—To 120 acres of corn on Alabama river	-	-	-	9,500 00
To crops of peas, fodder, &c.	-	-	-	3,250 00
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				34,952 00
To interest on \$22,202, from July, 1813, to November, 1860, 47 years and 4 months	-	-	-	63,053 68
To interest on \$12,750, from September, 1814, to November, 1860, 46 years and 2 months	-	-	-	35,317 50
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				133,323 18
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And the sum of one hundred and thirty-three thousand three hundred and twenty-three dollars and eighteen cents I find to be justly and equitably due to the legal representatives of George Fisher, deceased; from which amount there must be deducted the sums which have been heretofore allowed and paid by the United States as follows:

Payment made April 22, 1848	-	-	-	\$8,773 00
Payment made December 31, 1848	-	-	-	8,797 94
Payment made May 12, 1849	-	-	-	10,004 89
Payment made October 12, 1858	-	-	-	22,881 28
Payment made November 6, 1858	-	-	-	16,346 22

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66,803 33

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Which sum of sixty-six thousand eight hundred and three dollars and thirty-three cents is to be deducted from the aforesaid sum of one hundred and thirty-three thousand three hundred and twenty-three dollars and eighteen cents, and the remainder, after said deduction, being the sum of sixty-six thousand five hundred and nineteen dollars and eighty-five cents, (\$66,519 85,) is the amount which I find to be due to the legal representatives of George Fisher, deceased, from the United States, payable out of any money in the treasury not otherwise appropriated, under the act entitled "An act for the relief of the legal representatives of George Fisher, deceased," approved April 12, 1848, and its several supplements; and which will be paid, accordingly, to the administrator of the estate of George Fisher, deceased, or to his attorney in fact.

JOHN B. FLOYD,  
*Secretary of War.*

